IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 7990, 7991 & 5112 of 1999

with

CRIMINAL MISC.APPLICATION No 3860 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RANJINIKANT VADILAL GANDHI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 7990 of 1999
MR BS PATEL for Petitioners
MR HL JANI APP for Respondent No. 1

2. Criminal Misc.ApplicationNo 3860 of 1999
MR BS PATEL for Petitioners
MR HL JANI APP for Respondent No. 1
RULE UNSERVED for Respondent No. 2

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 19/12/2000

ORAL JUDGEMENT

Heard learned advocate Mr B.S.Patel for the petitioner and Mr H.L. Jani, learned APP, for the respondents in each of the matters.

2 As common question of law and fact are involved in the above said four matters, all the matters are taken up for hearing together and are being disposed of by this common order.

3 The petitioners of Criminal Misc. Application No.7990 of 1999 are the Directors and Office Bearers of Lunawada People's Cooperative Bank Limited. Respondent no.2 - Assistant Cooperative Officer on instructions of the District Registrar, Panchmahals, filed Criminal Case No.1112 of 1998 against the petitioners in the Court of learend JMFC, Lunawada, for the offence made punishable under Secton 147(1)(d) of the Gujarat Cooperative Societies Act, 1961, ("Act" for short). That on 10.11.1998 the learned JMFC, Lunawada, ordered to issue summons against the present petitioners for the said offence against which the petitioners have filed the present petition.

4 The petitioners of Criminal Misc. Application No.7991 of 1999 are the Directors and Office Bearers of Lunawada People's Cooperative Bank Limited. Respondent no.2 - Cooperative Officer on instructions of the District Registrar, Panchmahals, filed Criminal Case No.578 of 1998 against the petitioners in the Court of learend JMFC, Lunawada, for the offence made punishable under Secton 147(1)(d) of the Gujarat Cooperative Societies Act, 1961. That on 15.07.1998 the learned JMFC, Lunawada, ordered to issue summons against the present petitioners for the said offence against which the petitioners have filed the present petition.

5 The petitioners of Criminal Misc. Application No.5112 of 1999 are the Directors and Office Bearers of Bharuch Cooperative Milk Producers Union Limited. Respondent no.2 - Asst, Cooperative Officer on instructions of the District Registrar, Bharuch, filed Criminal Case No.22270 of 1999 against the petitioners in

the Court of learned Chief Judcial Magistrate, Bharuch, for the offence made punishable under Secton 147(1)(d) of the Gujarat Cooperative Societies Act, 1961. That on 16.07.1999 the learned Chief Judcial Magistrate, Bharuch, ordered to issue summons against the present petitioners for the said offence against which the petitioners have filed the present petition.

6 The petitioners of Criminal Misc. Application No.3860 of 1999 are the Directors and Office Bearers of Bharuch District Central Cooperative Bank Limited, a cooeprative banking society, registered under the provisions of the said Act. Respondent no.2 Cooperative Officer on instructions of the District Registrar, Bharuch, filed Criminal Case No.4916 of 1999 against the petitioners in the Court of learned Chief Judcial Magistrate, Bharuch, for the offence made punishable under Secton 147(1)(d) of the Gujarat Cooperative Societies Act, 1961. That on 19.02.1999 the learned Chief Judcial Magistrate, Bharuch, ordered to issue summons against the present petitioners for the said offence against which the petitioners have filed the present petition.

7 Learned advocate Mr B.S.Patel appearing for the petitioners in each of the matters has sought to assail the impugned order in each of the proceedings by contending that criminal proceedings filed against the petitioners in each of the matters is filed for violation of the provisions contained in Section 71 of the said Act which is an offence u/s 147(1)(d) of the Act on the facts that the petitioners as office bearers and directors of the respective cooperative society have invested the fund not in a manner which is required by Section 71 of the Act. That the offence u/s 71 of the Act is made punishable under Section 147(1)(d) of the Act. The punishment prescribed therein is the fine only which could be extended to Rs.500/-. It is urged by Mr B.S.Patel that offence under the Act are triable according to the provisions contained in the Cr.P.C. as prescribed under Schedule-II to the Cr.PC, 1973 (Code for short). That Section 468(1) prescribes bar in taking cognizance of any offence of the categories specified in sub-section (2) of Section 468 after the expiry of the period of limitation prescribed therein. That Section 468(2)(a) prescribes the period of limitation of six months if the offence is punishable with fine only. In Criminal Misc. Application No.7990 of 1999 the complaint was filed on 10.11.1998 while as per allegation made in the complaint the offence is alleged to have been committed on 27.3.1997 which is beyond the prescribed

period of limitation and thereby cognizance taken by the Court of JMFC, Lunawada, being contrary to law, the complaint is not maintainable and the complaint as well as the order passed by the trial Court deserves to be quashed and set aside.

8 Similarly, in the proceedings of Criminal Misc. Application No.7991 of 1999 the complaint was filed on 15.07.1998 while as per allegation made in the complaint the offence is alleged to have been committed on 29.3.1997 which is beyond the prescribed period of limitation and thereby cognizance taken by the Court of JMFC, Lunawada, being contrary to law, the complaint is not maintainable and the complaint as well as the order passed by the trial Court deserves to be quashed and set aside.

9 That in the proceedings of Criminal Misc. Application No.5112 of 1999 the complaint was filed on 16.07.1999 while as per allegation made in the complaint the offence is alleged to have been committed on 26.7.1997 which is also beyond the prescribed period of limitation and thereby cognizance taken by the Court of Chief Judicial Magistrate, Bharuch, being contrary to law, the complaint is not maintainable and the complaint as well as the order passed by the trial Court deserves to be quashed and set aside.

10 That in the proceedings of Criminal Misc. Application No.3860 of 1999 the complaint was filed on 19.02.1999 while as per allegation made in the complaint the offence is alleged to have been committed on 27.1.1997 which is also beyond the prescribed period of limitation and thereby cognizance taken by the Court of Chief Judicial Magistrate, Bharuch, being contrary to law, the complaint is not maintainable and the complaint as well as the order passed by the trial Court deserves to be quashed and set aside.

11 The learned APP, Mr HL Jani, submitted that the public monies have been invested by the petitioners contrary to the prescription made in a Statute with a view to earn higher profit and thereby it cannot be said that the complaints are filed beyond the prescribed period of limitation.

12 It is undisputed that as per the averments made in a petition all the investments made contrary to the prescribed manner in a Statute u/s 71 of the Act have been returned and there is no allegation against the petitioners that they have committed economic offences. Under the circumstances, there is no question of

condonation of delay and the Court ought to have strictly construed the period of limitation u/s 468(2)(a) of the Code before taking cognizance of the respective complaints in each of the matters.

13 On the basis of the foregoing discussion, the petitions are allowed. The impugned complaint and the order passed thereon by the trial Court in each of the complaints issuing process against the respective petitioner are hereby qua
that extent is made absolute in each of the petitions.

19.12.2000 (A K Trivedi, J.)
(mohd)